No. 1388

In the
Supreme Court of the United States

OCTOBER TERM, 1966

ALEXANDER TCHEREPNIN, MING TCHEREPNIN, CHARLES NOLL, MAYBELLE NOLL, HARRY BLOCK, JEANETTE A. BLOCK, WERNER D. BLOCK, ADRIAN DA PRATO, PETER DA PRATO, FREDERICK D. WAHL, ANNE W. WAHL, THEODORE MACHATKA, MARIE B. MACHATKA, JOSEPH NOVAK, FRANCES NOVAK, MARYBETH SIMJACK, WALTER R. ANDERSON and HELEN K. KELLOGG,

Petitioners,

vs.

JOSEPH E. KNIGHT, JUSTIN HULMAN, CITY SAVINGS ASSOCIATION, DENNIS KIRBY, HARRY HARTMAN, LOUIS KWASMAN, ROBERT FRANZ, STANLEY PASKO, JOSEPH TALARICO, JR., HERBERT J. HOOVER, ROBERT M. KRAMER, C. ORAN MENNIK and GLORIA MENNIK SPRINCE,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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OCTOBER TERM, 1966

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JOSEPH E. KNIGHT, JUSTIN HULMAN, CITY SAVINGS ASSOCIATION, DENNIS KIRBY, HARRY HARTMAN, LOUIS KWASMAN, ROBERT FRANZ, STANLEY PASKO, JOSEPH TALARICO, JR., HERBERT J. HOOVER, ROBERT M. KRAMER, C. ORAN MENSIK and GLORIA MENSIK SPRINCZ,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Statutes Involved

In addition to the statutes and regulations cited in the Petition, the following statute is also involved:

Securities Exchange Act of 1934, § 2, 48 Stat. 881, 15 U.S.C. §78(b) (1964). The full text of this statute is set forth in the Appendix to this brief.

Statement of the Case.

This case is concerned solely with withdrawable capital accounts of the City Savings Association, a savings and loan association chartered by the State of Illinois. The Illinois Savings and Loan Act authorizes the creation of associations having a capital structure consisting of either withdrawable capital accounts or permanent reserve shares, or both. *Ill. Rev. Stat.* Ch. 32, §761 (1965). City Savings Association did not issue permanent reserve shares, but only issued withdrawable capital accounts.

Petitioners' statement of the case fails to set forth the characteristics of withdrawable accounts in Illinois Savings and Loan Associations. These characteristics may be summarized as follows:

1. Withdrawable capital accounts may be issued in unlimited amounts. *Ill. Rev. Stat.*, ch. 32, §728(5) (1965). By comparison, permanent reserve shares must have a par value and a limited amount which can be issued. *Ill. Rev. Stat.*, ch. 32, §728(6) (1965).

2. Withdrawable capital accounts are not subject to the securities article of the Uniform Commercial Code. *Ill. Rev. Stat.*, ch. 32, §768(c) (1965).

3. Withdrawable capital accounts are not negotiable and may be transferred only by assignment. *Ill. Rev. Stat.*, ch. 32, §768(b), (c) (1965).

4. Withdrawable capital accounts are subject to forced redemption and retirement at any time upon the call of the Board of Directors. *Ill. Rev. Stat.*, ch. 32 §775(a) (1965).

5. Withdrawable capital accounts are fully matured and completely withdrawable at the time they are issued. *Ill. Rev. Stat.*, ch. 32, §§762(a) and 773(a) (1965). Permanent reserve shares, of course, are not withdrawable. *Ill. Rev. Stat.*, ch. 32, §763(a) (1965).

6. Withdrawable capital accounts have no pre-emptive rights.

7. Withdrawable capital accounts are evidenced by a certificate or account book. *Ill. Rev. Stat.*, ch. 32, §768(a) (1965).

8. Holders of withdrawable capital accounts are not entitled to inspect the general books and records of the association. *Ill. Rev. Stat.*, ch. 32, §748 (1965).

9. Holders of withdrawable capital accounts are entitled to vote for directors, *Ill. Rev. Stat.*, ch. 32, §742 (1965).

10. Withdrawable capital accounts are entitled to dividends as may be declared by the Board of Directors. *Ill. Rev. Stat.*, ch. 32, §762(b) (1965).

11. No annual or other report is furnished to depositors, although an annual report must be published in at least one newspaper. *Ill Rev. Stat.*, ch. 32, §844(c) (1965).

Petitioners' statement of the case is also inaccurate and misleading in its reference to the withdrawable capital accounts of City Savings Association as "shares" and "capital shares." (Petition 3-4.) The Illinois statutes which provide for the creation of the interests before this Court use the term "withdrawable capital accounts" when referring to these interests. *Ill. Rev. Stat.*, ch. 32, §§761-762, 768-773, 775, 777, 779 (1965).

REASONS FOR DENYING THE WRIT

I.

THE DECISION OF THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT RELATES ONLY TO THE NARROW QUESTION OF THE APPLICABILITY OF THE SECURITIES EXCHANGE ACT OF 1934 TO THE WITHDRAWABLE CAPITAL ACCOUNTS OF CITY SAVINGS ASSOCIATION AND HAS NO SIGNIFICANCE BEYOND THE FACTS OF THIS CASE.

A.

The Decision Below Does Not Limit The Act's Applicability to Other Securities.

The Court below correctly held that the withdrawable capital accounts of City Savings Association were not "securities" within the meaning of that term as used in the Securities Exchange Act of 1934, and accordingly ordered the complaint dismissed. The Court carefully limited its opinion to the facts of this case and to the characteristics of City Savings Association's withdrawable capital accounts as they related to the statutory definition of the term "security."

The Court does not overrule any prior decisions of this or any other court and leaves standing numerous cases holding that instruments encompassed by the specific language of the definition are "securities." Contrary to Petitioners' assertion, (Petition 12-13) the Court did not announce any general rule that such instruments must also meet a further general test of being "commonly known

as securities" to make them subject to the Act.[1] As thus viewed, the lower court's opinion does not in any way limit the applicability of the Securities Exchange Act of 1934 or curtail its enforcement.

B.

The Decision Of The Court Of Appeals Has No Application Beyond the Facts of This Case.

Petitioners have attempted to convince this Court that the decision below has nationwide scope. (Petition 10.) Petitioners theoretically are correct that the decision applies to the holders of similar withdrawable capital accounts in other savings and loan associations. But beyond theory, the actual impact of the decision is negligible and insignificant. That not one account-holder (let alone the "millions" charged by petitioners) has or will be adversely affected by the decision is amply demonstrated by the fact that not one case seeking to apply the 1934 Act to withdrawable capital accounts has arisen in the 33 years since the Act became effective. Outside of the petitioners in this case, no holders of withdrawable capital accounts have sought the protection of the 1934 Act.[2]

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[1] *Llanos* v. *United States,* 206 F.2d 852 (9th Cir. 1953), which holds that the phrase, "any instrument commonly known as a security" is not a limitation on the applicability of the Act, was not discussed, much less overruled, by the Court below.

[2] Petitioners cite several lower court cases supposedly holding that withdrawable capital accounts are securities. The case of *SEC* v. *American International Savings and Loan Association,* 199 F.Supp. 341 (D. Md. 1961) is clearly inapplicable because the court there held that American International was not operating as a savings and loan association, but was operating as a corporation. *United States* v. *Hopps,* 215 F.Supp. 734 (D. Md. 1962), *aff'd,* 331 F.2d 332 (4th Cir. 1964) does not purport to adjudicate that withdrawable capital accounts are securities and in fact cites *SEC* v. *American International Savings and Loan Association, supra,* as an example of an association which only operates nominally as such.

C.

Application Of The 1934 Act To Withdrawable Capital Accounts Serves No Useful Purpose.

The reason why the question presented has never arisen before is obvious. Application of the 1934 Act to withdrawable capital accounts serves no useful purpose. The state laws which authorize the creation of withdrawable capital accounts also authorize what the name implies—the right of the depositor to withdraw his account at any time. See *Ill. Rev. Stat.*, ch. 32, §§762(a), 773(a) (1965). In other words, the depositor, at any time he so wishes (and without the necessity of a lawsuit) can rescind the transaction and have immediate restitution of his deposit. Under the 1934 Act (assuming *arguendo* that it applies), this can be accomplished only by a lawsuit.

As long as the savings and loan association is a going concern, the state remedy is fully effective and a depositor (whether merely disgrundled or actually defrauded or merely desirous of a return of his money) quite naturally would never resort to the Securities Exchange Act for a remedy. Therefore, application of the 1934 Act to these accounts is unnecessary.

Nor does the fact that the association is in liquidation require application of the 1934 Act to these accounts. Although the right to imemdiately withdraw the deposit ends when an association goes into liquidation, nevertheless the depositor is still entitled to a return of his deposit under the state laws. See *Ill. Rev. Stat.*, ch. 32, §§907-908 (1965). The 1934 Act does not give a greater remedy or change the result.

Wisconsin Bankers Association v. *Robertson*, 294 F.2d 714 (D.C. Cir. 1961) merely held that shares in a federal savings and loan association were investments and not exactly equivalent to bank deposits. The court did not determine whether such shares were securities.

Petitioners seek to apply the 1934 Act in this case for the sole purpose of obtaining a priority over other depositors not within their class. But the 1934 Act does not authorize this. The 1934 Act merely allows the depositor to reduce to judgment his concededly valid claim against the association. Nothing in the 1934 Act gives these judgments priority, and therefore the depositors must still share pro rata in the assets of the association.

As a matter of fact, petitioners, in oral argument below, abandoned their contention that they are by virtue of the Securities and Exchange Act of 1934 entitled to a prior claim to the assets and stated that they claimed a priority based on the provisions of the Illinois Savings and Loan Act and an amendment to that Act in 1959.[3] But this is a question of local law and not a question under the 1934 Act. Obviously it was the intent of Congress in excluding state savings and loan associations from Federal bankruptcy jurisdiction [11 U.S.C. §22, (1964)], that these questions of priority to assets in the liquidation of state chartered savings and loan associations should be decided by state authorities.

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[3] Petitioners base their claim to priority on an amendment (repealed in 1965) which became effective on July 9, 1959. [Ill. Rev. Stat., ch. 32, §773(h) (1963)]. This amendment allowed an association which had placed withdrawal restrictions on its accounts to accept new deposits, provided no limitations were placed upon withdrawal of the new accounts. Petitioners, who represent persons who made deposits after this amendment, argue that they are entitled to preference over old depositors.

II.

THE DECISION BELOW CORRECTLY FOUND THAT CONGRESS DID NOT INTEND WITHDRAWABLE CAPITAL ACCOUNTS TO BE SECURITIES UNDER THE 1934 ACT.

In any case involving a question of the application of the Securities Exchange Act of 1934, the central question to be resolved is whether Congress intended the Act to apply. In this Court's previous decisions concerning the definitions of "securities" in the Securities Exchange Act of 1933 placed primary emphasis upon the intent of Congress. *SEC* v. *C. M. Joiner Leasing Corp.*, 320 U.S. 344, 350-53 (1943); *SEC* v. *Variable Annuity Life Insurance Co.*, 359 U.S. 65-69 (1959); *SEC* v. *W. J. Howey Co.*, 328 U.S. 293, 298-99 (1946). That is the sole consideration involved here. As demonstrated below, Congress did not intend withdrawable capital accounts to be securities under the 1934 Act.

A. Congress Specifically Excluded Short-term Fixed Obligations From The Act.

Congress exempted from the definition of the term "security" such interests as currency, notes, drafts, bills of exchange and bankers' acceptances which have a maturity at the time of issuance of not exceeding nine months. Securities Exchange Act of 1934, §3(a)(10), 15 U.S.C. §78(a)(10) (1964) (Appendix to Petition 44.) By this exception, Congress was declaring that fixed-amount obligations fully matured at issue would not be subject to the Act. Withdrawable capital accounts in savings and loan associations are fully withdrawable at any time and are,

therefore, mature at issue. The deposit is a fixed amount obligation and does not fluctuate in value. The Court below relied upon this evidence of Congressional intent. *Tcherepnin* v. *Knight*, 371 F.2d 374, 377 (7th Cir. 1967) (Appendix to Petition 25).

B. Congress Intended the Act to Apply Only to Interests Having a Fluctuating Market Value.

Congress clearly expressed its intent that the 1934 Act was designed to regulate only securities which are negotiable and for which a fluctuating market exists. As Congress clearly stated, the Act was designed to regulate

> "transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets . . . [when] the prices of securities on such exchanges and markets are susceptible to manipulation and control, and the dissemination of such prices gives rise to excessive speculation resulting in sudden and unreasonable fluctuations in the prices of securities . . ." Securities Exchange Act of 1934, §2, 15 U.S.C. §78b (1964). (The full text of Section 2 is set forth in the Appendix to this brief.

This Congressional purpose was clearly recognized by this Court in *SEC* v. *C. M. Joiner Leasing Co.*, 320 U.S. 344, 351 (1943):

> "In the Securities Act, the term 'security' was defined to include by name or description any documents in which there is *common trading for speculation or investment.*" (Emphasis added.)

Since a withdrawable account in an Illinois savings and loan association is by statute made non-negotiable, no fluctuating market exists for savings accounts and as a consequence they are not traded either on exchanges or on

over-the-counter markets. (The SEC, in its brief below, admitted that withdrawable capital accounts "are not commonly traded." Brief p. 24) Congress thus did not intend for them to be subject to the 1934 Act. The Court below correctly relied upon this Congressional intent in reaching its decision. *Tcherepnin* v. *Knight,* 371 F.2d 374, 376, 377 (7th Cir. 1967) (Appendix to Petition 24-25).

Also, the historical context in which the 1934 Act was enacted furnishes further evidence of the intent of Congress to regulate only those interests having a fluctuating value.[4] As reflected in Section 2 of the Act, the Great Crash of 1929 was attributed by many to excessive speculation in securities with great fluctuation in their prices. This led Congress to enact remedial legislation.

But neither speculation, trading, or fluctuation in prices occurs with respect to withdrawable capital accounts, and thus they fall outside the scope of intended Congressional regulation.

C. Congress and the SEC Consider Withdrawable Accounts as Being Similar to Bank Accounts and Insurance Policies, Which Are Not Securities.

The characteristics of the withdrawable capital account are much like those of a bank deposit. Neither is subject to fluctuation in price and neither is negotiable or traded. Both earn income, expressed as a percent per annum. Of course, there are differences between the bank account and the withdrawable savings account but these differences do not call for application of the 1934 Act to savings accounts.

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[4] As this Court stated in *Great Northern Railway Co.* v. *United States,* 315 U.S. 262, 273 (1942): "Courts in construing a statute may with propriety recur to the history of the times when it was passed."

The Securities Exchange Commission has always taken the position that withdrawable savings accounts are similar to deposits in banks and, therefore, not subject to the Act. As Chairman Cary testified in hearings for the 1964 amendments to the Securities Act:

> "On the other hand, savings accounts in savings and loan associations are not subject to the bill just as insurance policies are not covered. Because of the fact that most savings and loan associations issue so-called shares which in fact merely evidence the existence of a savings account, special provision had to be made in proposed §12(g)(2)(c) of the bill to exempt that type of 'share'." *Hearings on H.R. 6789, H.R. 6793 and S. 1642 before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 88th Cong. 1st Sess., page 1213* (1963).

As the Commission explained in a memorandum to the House Subcommittee, "the sole purpose of this exemption is to assure that depositors in savings and loan associations and similar institutions are treated exactly as bank depositors and not as shareholders of equity securities for the purpose of the coverage criteria contained in the bills." House Hearings, *supra* at page 1361.

Further, as indicated by the testimony of Chairman Cary, the Securities Exchange Commission also views withdrawable capital accounts in savings and loan associations in the same light as insurance policies, which are clearly not securities under either the 1933 or 1934 Acts. [2 *Loss, Securities Regulation* 497 (2d Ed. 1961)]. Mr. Cary testified that

> "With respect to savings and loan associations, an effort is made to treat them in essentially the same manner as insurance companies are treated, that is, mutual savings and loan associations will be exempt, just as mutual insurance companies are." House Hearings, *supra,* page 1213.

Finally, as the court below pointed out, Congress, by excluding the phrase "evidence of indebtedness" from the 1934 Act while at the same time including it within the definition of "security" under the 1933 Act, expressed its intent that instruments which were not specifically mentioned in the definition but which had the characteristics of debt were not to be considered "securities." *Tcherepnin* v. *Knight,* 371 F.2d 374, 377-78 (7th Cir. 1967) (Appendix to Petition 27.)

Further evidence of Congressional intent to exclude savings and loan associations from federal regulation is their specific exemption from the Bankruptcy Act. See 11 U.S.C. § 22 (1964). As pointed out above, the 1934 Act can only have significance for holders of withdrawable capital accounts in the event of liquidation and insolvency. But the Bankruptcy Act clearly indicates that state law and not the 1934 Act should then be applicable.

III.

THE HOLDING OF THE COURT BELOW IS CONSISTENT WITH PRIOR DECISIONS OF THIS COURT.

This Court has not decided the question of what constitutes a "security" within the meaning of that term as defined in the Securities Exchange Act of 1934. However, it has decided questions under the Securities Act of 1933, which presumably give guidelines for resolving the question presented by this case. In discussing whether assignments of oil leases were securities under the 1933 Act this Court stated: ". . . In the Securities Act the term 'security' was defined to include by name or description many documents in which there is *common trading for speculation or investment.*" *SEC* v. *C. M. Joiner Leasing Corp.,* 320 U.S. 344, 351 (1943) (Emphasis ad-

ded.) In *SEC* v. *W. J. Howey Co.*, 328 U.S. 293, 301 (1946), this Court stated its view of the law in this area even more clearly: "The test is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others."

There are three requirements, therefore, for an instrument to be a security within the 1934 Act: (1) There must be an investment of money in a common enterprise; (2) there must be profits derived solely from the efforts of others; and (3) there must be common trading for speculation or investment. All of these elements are missing from the withdrawable capital accounts of savings and loan associations.

In the first place, a deposit in a withdrawable savings account is not an investment but actually creates a debtor-creditor relationship. *Harn* v. *Woodard*, 151 Ind. 132, 50 N.E. 33 (1898). The depositor loans his money to the association with the knowledge that it is withdrawable at will and in the expectation that his deposit will earn interest. While the Illinois courts have not definitely adjudicated this relationship, numerous other jurisdictions confirm that the relationship is one of debtor and creditor. See *In re Krueger's Estate*, 180 Wash. 165, 39 P.2d 381, 383 (1934); *Bell* v. *Bakerstown Savings Assn.*, 385 Pa. 158 122 A.2d 411, 413 (1956); *Rummens* v. *Home Savings Assn.*, 182 Wash. 539, 47 P. 2d 845, 846 (1935).[5] Thus, the rela-

[5]Petitioners contend that the Illinois Legislature has decreed that withdrawable capital accounts are "securities." However, petitioners rely upon an exemption from the provisions of the Illinois Blue Sky Law. Petitioners made this same contention below. The court below correctly held that exemptions from coverage do not constitute evidence of inclusion within the definition, and cited a similar exemption for insurance policies under the 1934 Act, which has been held not to imply that insurance policies are securities in the first instance.

tionship in the instant case is more closely analogous to one of debtor-creditor and *not* one of investment. The Court below correctly found that the "investment in a common enterprise" test of this Court was not met. *Tcherepnin* v. *Knight*, 371 F.2d 374, 377 (7th Cir. 1967) (Appendix to Petition 26).

In the second place, profit is not derived "solely from the efforts of others." Money that is deposited is loaned to other members of the savings and loan association. Depositors and borrowers must be members of the association. *Ill. Rev. Stat.*, ch. 32, §741 (1965). Thus, the profits of the enterprise result from the activities of members among themselves. Outsiders do not have any but the smallest dealings with the association. The Court below expressly recognized the failure of withdrawable capital accounts to meet this test. *Tcherepnin* v. *Knight*, 371 U.S. 374, 377 (7th Cir. 1967) (Appendix to Petition 26).

Finally, the *Joiner* case sets up the requirement that there be common trading for speculation or investment for an instrument to be a security. Because of the non-negotiable character and fixed-amount obligation of withdrawable accounts, there is no common trading for speculation or investment in the withdrawable capital accounts of City Savings Association.

This fundamental requirement of trading in interests having a fluctuatory value was recognized in *SEC* v. *Variable Annuity Life Ins. Co.*, 359 U.S. 65 (1959). There, variable annuity contracts, whose return was not fixed but whose return was measured by the success or failure of the investment policy of the annuity company, were held to be securities. As Mr. Justice Brennan emphasized in his concurring opinion, Congress intended to regulate only those interests which had a fluctuating

value and whose return to the investor was measured by the success or failure of the investment company's experience.

Mr. Justice Brennan also pointed out that when it can be found that Congress left substantial responsibility for regulation to the states and that the regulatory functions assigned to the federal government cannot be accomplished by holding the interests involved to be securities, then the Securities Act should not apply. As is the case with insurance companies, the State of Illinois assumes a major role in the regulation of the operation of savings and loan associations.[6] Given this State regulatory scheme and given Congress's intent to exclude from federal regulation and control interests not having a fluctuating market value, the *Variable Annuity* decision compels the result that these withdrawable capital accounts are not securities within the meaning of the 1934 Act.

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[6]For example, in Illinois the investments made by savings and loans are strictly limited by statute. Ill. Rev. Stat., ch. 32, §§791 through 804 (1965). Directors or officers who knowingly make or plan an unauthorized investment are individually liable for all consequential damages to the depositors. Ill. Rev. Stat., ch. 32, §902 (1965). The Commissioner of Savings and Loan Associations is given supervisory power over state chartered savings and loan associations. He is required to cause a surprise examination of every association annually and is empowered to compel compliance with recommended corrective measures. Ill. Rev. Stat., ch. 32, §842 (1965). Under certain circumstances, the Commissioner is empowered to take custody of any association which has refused to take corrective action or which has impaired its withdrawable capital or which is being conducted in a fraudulent, illegal or unsafe manner. Ill. Rev. Stat., ch. 32, §848 (1965). The Commissioner does not relinquish custody until the causes for his taking custody have been removed. Ill. Rev. Stat., ch. 32, §854 (1965).

Of course, petitioners here are bearing the risk of insolvency of the Association. However, as Mr. Justice Brennan pointed out, the Federal Securities Acts are not designed to protect against this risk:

> "Even more unpersuasive is the respondents' argument that even in a traditional annuity the policyholder bears the investment risk in the sense that he stands the risk of the company's insolvency. The prevention of insolvency and the maintenance of 'sound' financial condition in terms of fixed-dollar obligations is precisely what traditional state regulation is aimed at." *SEC* v. *Variable Annuity Life Ins. Co.*, 359 U.S. 65, 90-91 (1959).

And as further pointed out by Mr. Justice Harlan in his dissenting opinion in the *Variable Annuity* case, savings bank deposits were equated by Congress with insurance policies and neither were intended to be subject to the Securities Exchange Act of 1934. (359 U.S. at 98-99.)

CONCLUSION

For the reasons stated above, these Respondents respectfully pray that the petition for a writ of certiorari be denied.

Respectfully submitted,

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APPENDIX

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Securities Exchange Act of 1934, §2, 48 Stat. 881, 15 U.S.C. §78(b) (1964):

"For the reasons hereinafter enumerated, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto, including transactions by officers, directors, and principal security holders, to require appropriate reports, and to impose requirements necessary to make such regulation and control reasonably complete and effective, in order to protect interstate commerce, the national credit, the Federal taxing power, to protect and make more effective the national banking system and Federal Reserve System, and to insure the maintenance of fair and honest markets in such transactions.

"(1) Such transactions (a) are carried on in large volume by the public generally and in large part originate outside the States in which the exchanges and over-the-counter markets are located and/or are effected by means of the mails and instrumentalities of interstate commerce; (b) constitute an important part of the current of interstate commerce; (c) involve in large part the securities of issuers engaged in interstate commerce; (d) involve the use of credit, directly affect the financing of trade, industry, and transportation in interstate commerce, and directly affect and influence the volume of interstate commerce; and affect the national credit.

"(2) The prices established and offered in such transactions are generally disseminated and quoted throughout the United States and foreign countries and constitute a basis for determining and establishing the prices at which securities are bought and sold, the

amount of certain taxes owing to the United States and to the several States by owners, buyers, and sellers of securities, and the value of collateral for bank loans.

"(3) Frequently the prices of securities on such exchanges and markets are susceptible to manipulation and control, and the dissemination of such prices gives rise to excessive speculation, resulting in sudden and unreasonable fluctuations in the prices of securities which (a) cause alternately unreasonable expansion and unreasonable contraction of the volume of credit available for trade, transportation, and industry in interstate commerce, (b) hinder the proper appraisal of the value of securities and thus prevent a fair calculation of taxes owing to the United States and to the several States by owners, buyers, and sellers of securities, and (c) prevent the fair valuation of collateral for bank loans and/or obstruct the effective operation of the national banking system and Federal Reserve System.

"(4) National emergencies, which produce widespread unemployment and the dislocation of trade, transportation, and industry, and which burden interstate commerce and adversely affect the general welfare, are precipitated, intensified, and prolonged by manipulation and sudden and unreasonable fluctuations of security prices and by excessive speculation on such exchanges and markets, and to meet such emergencies the Federal Government is put to such great expense as to burden the national credit." Securities Exchange Act of 1934, § 2, 15 U.S.C. § 78b (1964).